

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Meiers

BIBIYAN LAW GROUP, P.C.

David D. Bibiyan (SBN 287811)

david@tomorrowlaw.com

Diego Aviles (SBN 315533)

diego@tomorrowlaw.com

Sara Ehsani-Nia (SBN 326501)

sara@tomorrowlaw.com

8484 Wilshire Blvd., Suite 500

Beverly Hill, California 90211

Tel; (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, JENNY M. LUNA,
on behalf of herself and all others aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JENNY M. LUNA, on behalf of herself and all
others similarly aggrieved,

Plaintiffs,

v.

PRONTO CALIFORNIA GENERAL
AGENCY, LLC., a Delaware limited liability
company; ARTHUR J. GALLAGHER
SERVICE COMPANY, INC., a surrendered
Delaware corporation; ARTHUR J.
GALLAGHER & CO., a surrendered
Delaware corporation; ARTHUR J.
GALLAGHER & CO. INSURANCE
BROKERS OF CALIFORNIA, INC., a
California corporation; ARTHUR J.
GALLAGHER RISK MANAGEMENT
SERVICES, INC., a Illinois corporation; H &
H AGENCY, INC., a California corporation;
DASHERS INSURANCE SERVICES, INC.,
a California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 20STCV24379

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1197.1 and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

1 in a workday or forty (40) hours in a workweek; all hours worked in excess of twelve (12) hours in
2 a workday; and/or for all hours worked on the seventh consecutive workday in a workweek, as a
3 result of, among other things, failing to accurately track and/or pay for all hours actually worked;
4 detrimental rounding or manipulation of time entries; paying overtime wages at the regular rate or
5 otherwise inaccurate rate(s) of pay; by auto-deducting meal periods taken, and failing to include all
6 forms of remuneration, including non-discretionary bonuses and/or incentive pay, into the regular
7 rate of pay for the purpose of calculating the overtime rate of pay, to the detriment of Plaintiff and
8 other similarly aggrieved employees.

9 3. At all relevant times mentioned herein, Defendants had and have a policy or practice
10 of, failing to pay minimum wages to Plaintiff and other non-exempt employees in the State of
11 California in violation of California state wage and hour laws as a result of, including but not limited
12 to, Defendants routinely paying wages below the minimum wage, failing to accurately track and/or
13 pay for all hours actually worked by, detrimental rounding or manipulation of time entries; by auto-
14 deducting meal periods; and failing to pay split shift premiums, to the detriment of Plaintiff and
15 other similarly aggrieved employees.

16 4. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of failing to provide Plaintiff and other aggrieved employees a thirty (30) minute uninterrupted,
18 timely, and complete meal period for days on which the employee worked in excess of five (5) hours
19 in a workday; a second thirty (30) minute uninterrupted, timely, and complete meal period for days
20 on which the employee worked in excess of ten (10) hours in a workday; or compensation in lieu
21 thereof, as required by California wage and hour laws.

22 5. At all relevant times mentioned herein, Defendants had and have a policy or practice
23 of failing to provide Plaintiff and other aggrieved employees paid, uninterrupted, timely, and
24 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
25 thereof, or compensation in lieu thereof, as required by California wage and hour laws.

26 6. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
28 Plaintiff other aggrieved employees with itemized wage statements that accurately reflect all gross

1 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at each
3 hourly rate by the employee; and other such information as required by Labor Code section 226,
4 subdivision (a).

5 7. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to timely pay Plaintiff and other aggrieved employees, among other wages, overtime
7 wages, minimum wages, and/or premium wages owed to them upon termination and/or resignation,
8 as required by Labor Code sections 201 and 202.

9 8. At all relevant times mentioned herein, Defendants have had a policy or practice of,
10 failing to provide Plaintiff and other aggrieved employees with, or permit them inspection of,
11 records pertaining to their employment, including wage statements and similar payroll documents
12 under Labor Code section 226, documents signed to obtain or hold employment under Labor Code
13 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
14 Code section 1174, to the detriment of Plaintiff and all other aggrieved employees.

15 9. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
17 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other aggrieved
18 employees with the rates of pay and overtime rates of pay applicable to their employment;
19 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
20 name of the employer, including any “doing business as” names used, the name, address, and
21 telephone number of the workers’ compensation insurance carrier; information regarding paid sick
22 leave; and other pertinent information required to be disclosed by Defendants under Labor Code
23 section 2810.5.

24 10. At all relevant times mentioned herein, Defendants have had a policy or practice of,
25 failing to provide Plaintiff and other aggrieved employees with the amount of paid sick leave
26 required to be provided pursuant to California law (including, without limitation Labor Code section
27 246, *et seq.*), and also did not permit its use upon request as contemplated under California laws, to
28 the detriment of Plaintiff and all other aggrieved employees.

11. At all relevant times mentioned herein, Defendants have had a policy or practice of failing to pay employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

12. Plaintiff, in her representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 558, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of herself and other aggrieved employees pursuant to PAGA.

PARTIES

A. Plaintiff

13. Plaintiff, JENNY M. LUNA, is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, customer service and insurance sales from approximately January of 2017 through approximately March of 2019.

B. Defendants

14. Plaintiff is informed and believes and based thereon alleges that defendant PRONTO is, and at all times relevant hereto was, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles, State of California.

15. Plaintiff is informed and believes and based thereon alleges that defendant GALLAGHER is, and at all times relevant hereto was, a surrendered corporation organized and existing under and by virtue of the laws of the State of Delaware, and doing business in the County of Los Angeles, State of California.

/ / /

/ / /

1 16. Plaintiff is informed and believes and based thereon alleges that defendant
2 GALLAGHER & CO. is, and at all times relevant hereto was, a surrendered corporation organized
3 and existing under and by virtue of the laws of the State of Delaware, and doing business in the
4 County of Los Angeles, State of California.

5 17. Plaintiff is informed and believes and based thereon alleges that defendant
6 GALLAGHER INS. is, and at all times relevant hereto was, a corporation organized and existing
7 under and by virtue of the laws of the State of California, and doing business in the County of Los
8 Angeles, State of California.

9 18. Plaintiff is informed and believes and based thereon alleges that defendant
10 GALLAGHER RISK is, and at all times relevant hereto was, a corporation organized and existing
11 under and by virtue of the laws of the State of Illinois, and doing business in the County of Los
12 Angeles, State of California.

13 19. Plaintiff is informed and believes and based thereon alleges that defendant
14 DASHERS is, and at all times relevant hereto was, a corporation organized and existing under and
15 by virtue of the laws of the State of California, and doing business in the County of Los Angeles,
16 State of California.

17 20. Plaintiff is informed and believes and based thereon alleges that defendant H & H is,
18 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the
19 laws of the California, and doing business in the County of Los Angeles, State of California.

20 21. The true names and capacities, whether individual, corporate, associate, or otherwise,
21 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
22 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
23 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
24 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
25 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
26 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
27 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
28 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or

1 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
2 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
3 include PRONTO, GALLAGHER, GALLAGHER & CO., GALLAGHER INS., GALLAGHER
4 RISK, DASHERS, H & H, and any of their parent, subsidiary, or affiliated companies within the
5 State of California, as well DOES 1 through 100 identified herein.

6 **JURISDICTION**

7 22. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
8 of Civil Procedure section 410.10.

9 23. Venue is proper in Los Angeles County in California pursuant to Code of Civil
10 Procedure section 392, *et seq.* because, among other things, Los Angeles County is where the causes
11 of action complained of herein arose; the county in which the employment relationship began; the
12 county in which performance of the employment contract, or part of it, between Plaintiff and
13 Defendants was due to be performed; the county in which the employment contract, or part of it,
14 between Plaintiff and Defendants was actually performed; and the unlawful acts alleged herein have
15 a direct effect on Plaintiff and those similarly situated within Los Angeles County and the State of
16 California.

17 24. Plaintiff is an “aggrieved employee” under PAGA, as she was employed by
18 Defendants during the applicable statutory period and suffered one or more of the Labor Code
19 violations set forth herein. Accordingly, Plaintiff seeks to recover, on behalf of herself and all other
20 aggrieved current and former employees of Defendants, the civil penalties provided by PAGA plus
21 reasonable attorneys’ fees and costs, as the term “civil penalty” is defined under *ZB N.A. v. Superior*
22 *Court* (2019) 8 Cal.5th 175.

23 25. Plaintiff seeks to recover the PAGA civil penalties through a representative action
24 permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v. Superior*
25 *Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the PAGA
26 allegations described herein is not required.

27 / / /

28 / / /

26. During the period beginning one (1) year preceding the provision of notice to the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”), Defendants violated, *inter alia*, Labor Code sections 200, 201, 202, 203, 204, 226, 226.3, 210, 246, 432, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198.5, 2699, and 2810.5, among others.

27. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees such as Plaintiff, on behalf of herself and all other aggrieved current and former employees within the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code section 2699.3.

28. On or around March 18, 2020, Plaintiff provided written notice under Labor Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants' violation of various, including the herein-described, provisions of the Labor Code, to the Labor and Workforce Development Agency ("LWDA"), as well as by certified mail, with return receipt requested to Defendants, and each of them. Furthermore, on or around March 20, 2020 Plaintiff provided an amended notice of Defendants' several violations of the Labor Code to the LWDA, as well as by certified mail, with return receipt requested to Defendants, and each of them.

29. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65) calendar days of the March 20, 2020 postmarked date of the herein-described notice sent by Plaintiff to the LWDA and Defendants.

30. On April 6, 2020, the Judicial Council of California approved Appendix I – Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of action are tolled from April 6, 2020 until October 1, 2020.

PAGA REPRESENTATIVE ALLEGATIONS

31. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other aggrieved employees have not been paid, during the relevant time period, wages for all time worked, including overtime wages, as a result of, without limitation, Defendants failing to pay overtime wages to Plaintiff and other non-exempt employees in the State of California in violation of

1 California state wage and hour laws as a result of, without limitation, Plaintiff and other aggrieved
2 employees working over eight (8) hours in a workday or forty (40) hours in a workweek; over twelve
3 (12) hours in a workday; and/or seven (7) consecutive workdays in a workweek without being
4 properly compensated for all hours worked in excess of eight (8) hours in a workday or forty (40)
5 hours in a workweek; all hours worked in excess of twelve (12) hours in a workday; and/or for all
6 hours worked on the seventh consecutive workday in a workweek, as a result of, among other things,
7 Defendants failing to accurately track and/or pay for all hours actually worked; detrimental rounding
8 or manipulation of time entries; paying overtime wages at the regular rate or otherwise inaccurate
9 rate(s) of pay; by auto-deducting meal periods taken, and failing to include all forms of
10 remuneration, including non-discretionary bonuses and/or incentive pay, into the regular rate of pay
11 for the purpose of calculating the overtime rate of pay, to the detriment of Plaintiff and other
12 aggrieved employees in the State of California. As such, Plaintiff is informed and believes, and
13 based thereon alleges, that Defendants violated Labor Code sections 510 and 1194, and applicable
14 Wage Orders based on their practice of providing total compensation that is less than the required
15 legal overtime compensation, entitling Plaintiff and other aggrieved employees to relief under,
16 without limitation, these sections. In addition, Defendants would also be liable for civil penalties
17 pursuant to Labor Code sections 558 and 2699.

18 32. Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and other
19 aggrieved employees have not been paid, during the relevant time period, wages for all time worked,
20 including minimum wages, as a result of, without limitation, Defendants routinely failing to pay
21 Plaintiff or other aggrieved employees' wages for all hours worked or otherwise under Defendants'
22 control due to, without limitation, paying wages below the minimum wage, failing to accurately
23 track and/or pay for all hours actually worked by, detrimental rounding or manipulation of time
24 entries; by auto-deducting meal periods; and failing to pay split shift premiums. As such, Plaintiff
25 is informed and believes, and based thereon alleges, that Defendants violated, without limitation,
26 Labor Code section 1197 and applicable Wage Orders, based on their continued failure to pay
27 minimum wages, entitling Plaintiff and other aggrieved employees to relief under, without
28 limitation, Labor Code sections 1194 and 1194.2. Defendants would also be liable for civil penalties

1 pursuant to Labor Code sections 558, 1197.1, and 2699.

2 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
3 and have policy or practice of failing to provide Plaintiff and other aggrieved employees a thirty
4 (30) minute uninterrupted, timely, and complete meal period for days on which the employee
5 worked in excess of five (5) hours in a workday; a second thirty (30) minute uninterrupted, timely,
6 and complete meal period for days on which the employee worked in excess of ten (10) hours in a
7 workday; or compensation in lieu thereof, including, without limitation, by interrupting meal
8 periods, not providing timely meal periods, failing to provide first and second meal periods all
9 together, providing short meal periods, and/or auto-deducting meal periods not taken. As such,
10 Plaintiff is informed and believes, and based thereon alleges, that Defendants violated Labor Code
11 section 512, entitling Plaintiff and other aggrieved employees to premium payments under Labor
12 Code section 226.7. Defendants would also be liable for civil penalties pursuant to Labor Code
13 sections 558 and 2699.

14 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
15 and have a policy or practice of failing to provide Plaintiff and other aggrieved employees paid,
16 uninterrupted, timely, and complete rest periods of at least ten (10) minutes per four (4) hours
17 worked or major fractions thereof, or compensation in lieu thereof as required under (the) applicable
18 Wage Order(s). As such, Plaintiff is informed and believes, and based thereon alleges, that she and
19 other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7.
20 Defendants would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

21 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
22 and have a policy or practice of failing to furnish Plaintiff other aggrieved employees with itemized
23 wage statements that accurately reflect all gross wages earned; total hours worked by the employee;
24 net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee; and other such
26 information as required by Labor Code section 226, subdivision (a). Consequently, since
27 Defendants would have failed to comply with Labor Code section 226, subdivision (a), Plaintiff and
28 other aggrieved employees would be entitled to recover penalties under, without limitation, Labor

1 Code section 226, subdivision (e). Defendants would also be liable for civil penalties pursuant to
2 Labor Code sections 226.3, 558 and 2699.

3 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
4 and have a policy or practice of failing or refusing to timely pay compensation to Plaintiff and other
5 terminated or resigned employees within the State of California, among other wages, overtime
6 wages, minimum wages, and/or premium wages. As such, Defendants would be liable for waiting
7 time penalties for having violated California Labor Code sections 201, 202, and 203. Defendants
8 would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

9 37. At all relevant times mentioned herein, Defendants have had a policy or practice of
10 failing to provide Plaintiff and other aggrieved employees with, or permit them inspection of,
11 records pertaining to their employment, including wage statements and similar payroll documents
12 under Labor Code section 226, documents signed to obtain or hold employment under Labor Code
13 section 432, personnel records under Labor Code section 1198.5, and time records under Labor
14 Code section 1174, to the detriment of Plaintiff and all other aggrieved employees. As a result of
15 these violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and
16 2699.

17 38. Plaintiff is informed and believes, and based thereon alleges that Defendants have,
18 and at all times relevant hereto had, a policy or practice of failing to comply with the notice
19 requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among
20 other things, failing to provide Plaintiff and other aggrieved employees with the rates of pay and
21 overtime rates of pay applicable to their employment; allowances claimed as part of the minimum
22 wage; the regular payday designated by Defendants; the name of the employer, including any “doing
23 business as” names used; the name, address, and telephone number of the workers’ compensation
24 insurance carrier; information regarding paid sick leave; and other pertinent information required to
25 be disclosed by Defendants under Labor Code section 2810.5. As such, Plaintiff is informed and
26 believes, and based thereon alleges that the failure to provide such information, including rates of
27 pay that are in effect, has permitted Defendants to pay employees at rates of pay that were not agreed
28 upon, in violation of overtime wage and minimum wage laws in California. As a result of these

1 violations, Defendants are liable for civil penalties pursuant to Labor Code sections 558 and 2699.

2 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
3 and have a policy or practice of failing to provide Plaintiff and other aggrieved employees with the
4 amount of paid sick leave required to be provided pursuant to California law (including, without
5 limitation, Labor Code section 246, *et seq.*), and also did not permit its use upon request as
6 contemplated under California law. As such, Defendants would be liable for civil penalties for
7 violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

8 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
9 and have a policy or practice of failing to pay Plaintiff and other aggrieved employees their wages
10 in accordance with Labor Code section 204, which requires that “[l]abor performed between the 1st
11 and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of
12 the month during which the labor was performed, and labor performed between the 16th and the last
13 day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
14 month.” As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants did
15 not and do not pay their employees in accordance with Labor Code section 204. Defendants would
16 be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

17 41. Plaintiff and other aggrieved employees at all times pertinent hereto were not exempt
18 from receiving overtime wages, minimum wages, meal breaks or compensation in lieu thereof, rest
19 breaks or compensation in lieu thereof, accurate wage statements, timely pay of wages during their
20 employment and after their employment separation, the opportunity to inspect employment records,
21 the proper accrual and use of paid sick leave, and other such provisions of California law and the
22 implementing rules and regulations of the IWC California Wage Orders.

23 42. As a result of these violations, Defendants are liable for civil penalties under PAGA.

24 **FIRST CAUSE OF ACTION**

25 **(Civil Penalties Under Labor Code § 210 – Against All Defendants)**

26 43. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
27 and incorporates each by reference as though fully set forth hereat.

28 ///

44. At all relevant times herein, Labor Code section 204, requires and required that:

“[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

45. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

46. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff and aggrieved employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other aggrieved employees or former employees she seeks to represent are entitled to recover civil penalties for Defendants' violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each aggrieved employee or former employee for each initial violation per employee, and two hundred dollars (\$200) for each aggrieved employee or former employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

SECOND CAUSE OF ACTION

(Civil Penalties Under Labor Code § 226.3 – Against All Defendants)

47. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

48. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; all applicable hourly rates in effect during

1 the pay period and the corresponding number of hours worked at each hourly rate; and other such
2 information as required by Labor Code section 226, subdivision (a).

3 49. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
4 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
5 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
6 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
7 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

8 50. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
9 this section are in addition to any other penalty provided by law.”

10 51. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
11 and have a policy or practice of failing to furnish non-exempt employees, including, without
12 limitation, Plaintiff, with itemized wage statements that accurately reflect all gross wages earned;
13 total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in
14 effect during the pay period and the corresponding number of hours worked at each hourly rate by
15 the employee; and other such information as required by Labor Code section 226, subdivision (a).

16 52. Pursuant to Labor Code section 226.3, Plaintiff and other aggrieved employees she
17 seeks to represent are entitled to recover civil penalties for Defendants’ violation of Labor Code
18 section 226, subdivision (a) in the amount of two hundred fifty dollars (\$250) for each aggrieved
19 current or former employee per pay period for the initial violation, and one thousand dollars (\$1,000)
20 for each aggrieved current or former employee per pay period for each subsequent violation.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of Labor Code § 558 – Against All Defendants)**

23 53. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
24 and incorporates each by reference as though fully set forth hereat.

25 54. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person
26 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
27 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil
28 penalty as follows:

- 1 a. For any initial violation, fifty dollars (\$50) for each underpaid employee and
2 for each pay period for which the employee was underpaid in addition to an
3 amount sufficient to recover underpaid wages;
- 4 b. For each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid in
6 addition to an amount sufficient to recover underpaid wages;
- 7 c. Wages recovered pursuant to this section shall be paid to the affected
8 employee.”

9 55. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
10 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
11 causing Plaintiff and other aggrieved employees not to, among other things: be paid overtime wages
12 and minimum wages; receive meal and rest periods or compensation in lieu thereof; be paid timely
13 wages during their employment and after their employment separation; receive accurate, itemized
14 wage statements; be provided with the opportunity to inspect employment records; and be provided
15 with notice as required under Labor Code section 2810.5.

16 56. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
17 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
18 Labor Code section 558 in amounts to be determined at trial.

19 **FOURTH CAUSE OF ACTION**

20 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

21 57. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
22 and incorporates each by reference as though fully set forth hereat.

23 58. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
24 person acting either individually or as an officer, agent, or employee of another person, who pays
25 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
26 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
27 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
28 Section 203 as follows:

- 1 a. For any initial violation that is intentionally committed, one hundred dollars
2 (\$100) for each underpaid employee for each pay period for which the
3 employee is underpaid. This amount shall be in addition to an amount
4 sufficient to recover underpaid wages, liquidated damages pursuant to Section
5 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 6 b. For each subsequent violation for the same specific offense, two hundred fifty
7 dollars (\$250) for each underpaid employee for each pay period for which the
8 employee is underpaid regardless of whether the initial violation is
9 intentionally committed. This amount shall be in addition to an amount
10 sufficient to recover underpaid wages, liquidated damages pursuant to Section
11 1194.2, and any applicable penalties imposed pursuant to Section 203.
- 12 c. Wages, liquidated damages, and any applicable penalties imposed pursuant to
13 Section 203, recovered pursuant to this section shall be paid to the affected
14 employee.”

15 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
16 Plaintiff and aggrieved employees not be paid minimum and overtime wages as a result of
17 Defendants, without limitation, by routinely paying wages below the minimum wage, failing to
18 accurately track and/or pay for all hours actually worked by, detrimental rounding or manipulation
19 of time entries; by auto-deducting meal periods not taken; and failing to pay split shift premiums,
20 to the detriment of Plaintiff and other aggrieved employees.

21 60. As a direct and proximate result of Defendants’ conduct, Plaintiff and other
22 aggrieved employees are entitled to recover directly from Defendants civil penalties pursuant to
23 Labor Code section 1197.1.

24 **FIFTH CAUSE OF ACTION**

25 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

26 61. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
27 the preceding paragraphs of this Complaint as though fully set forth hereat.

28 ///

62. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

63. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

64. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during employment and after employment separation; provide employees the opportunity to inspect employment records; and provide notice as required under Labor Code section 2810.5 entitling Plaintiff and other aggrieved employees to civil penalties for each of these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

65. Moreover, Plaintiff and other aggrieved current and former employees within the State of California whom she seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

REQUEST FOR JURY TRIAL

66. Plaintiff hereby requests a trial by jury.

PRAYER

WHEREFORE, on behalf of herself and all others aggrieved, Plaintiff prays for judgment against Defendants as follows:

- 1 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1197.1,
2 and 2699;
3 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections
4 210, 226.3, 558, 1197.1, and 2699;
5 C. Pre-judgment and post-judgment interest;
6 D. For costs of suit incurred herein; and
7 E. Such other and further relief as the Court deems just and proper.

8
9 Dated: June 29, 2020

BIBIYAN LAW GROUP, P.C.

10
11 BY: 

DIEGO AVILES

12 DAVID D. BIBIYAN

13 Attorneys for Plaintiff JENNY M. LUNA, on behalf of
14 herself and all other aggrieved employees
15
16
17
18
19
20
21
22
23
24
25
26
27
28